



ZONING BOARD OF ADJUSTMENT

AUGUST 28, 2019 MEETING ON SUP #006-2019

TRANSCRIPT

Notice: Pursuant to MCA 2-3-212(1), the official record of the minutes of the meeting is in audio form, located at cascadecountymt.gov and the Planning Office. This is a written record of this meeting to reflect all the proceedings of the Board. MCA 7-4-2611 (2) (b). Timestamps are indicated in red and will direct you to the precise location should you wish to review the audio segment. This is a partial transcription concerning only SUP #006-2019, Value-added Agricultural Commodity Processing Facility: Cheese Processing Plant.

Zoning Board of Adjustment Members Present: Bill Austin, Charles Kuether, Michele Levine, Leonard Reed, and Rob Skawinski.

County Staff Present: Anna Ehnes, Destiny Gough, Carey Haight, Sandor Hopkins, Michael Stone, and Charity Yonker.

Charles Kuether (00:06:59): Umm, Kind of to kick off the discussion, I, I put together. Can you guys hear it? Okay, kind of to kick off the discussion. I put together, I put together a summary of some of the items that I looked at and want to try to read you what I've put together. I typed it up just so that I wouldn't forget some of the things I had on my mind. In addition to the comments received at the public meeting, the board received some three hundred pages of written comments or attachments to comments from people considering the proposed cheese processing plant project. The majority of the written comments were from Cascade

1 County. Though we did get comments from people living in other
2 counties from throughout the state and from one apartment dweller
3 in Indiana. To organize my thoughts, I tried to genuinely
4 categorize whether a comment was pro, con, or neutral towards the
5 proposed project.

6 Some letters offered comments both ways, so they were not easy
7 to label. It's hard to tell the motivation some of the folks who
8 wrote the comments. Approximately (and this is just by my count)
9 fifty-six percent of the comments were negative, nineteen percent
10 of the comments were positive, and twenty-six percent of the
11 comments I wouldn't label either way. The percent of negative
12 comments is misleading without explanation. Many simply oppose the
13 slaughter plant, which is not part of this application. Many felt
14 this application was just a way for the applicant to get his foot
15 in the door. So, he could follow up with a slaughter plant. A few
16 appeared to oppose the application because the applicant, because
17 of the applicant uh, himself was Friesen. Some oppose stated
18 opposition to the slaughter plant, but within limits, were willing
19 to see the cheese processing plant approved. Three people provided
20 the bulk of the comment pages.

21 One of those persons wrote seventeen separate times. Those
22 three people provided fifty-seven, seventy-eight, and ninety-three
23 pages individually or two hundred and twenty-eight pages
24 collectively or about seventy-six percent of the comment pages.
25 Before I go any further, what do you say? I, I don't pretend to
26 represent that I'm giving you an exact page count. Pages were not
27 numbered and the number of pages I referenced from the three
28 individuals is the number that I counted. In one person's case,

1 more pages came in after I stopped counting, so I know that number
2 is larger. The point is not the actual number of pages, but just
3 to give you an idea flow of the comments as well as their
4 distribution. One of the people who provide these bulk pages, I
5 found out from other commenters was employed by Montanans for
6 Responsible Land Use; as well as I can tell that commenter did not
7 disclose her employment.

8 Failure to, failure to disclose that employment didn't strike
9 me as very professional and makes it more difficult for one to take
10 those comments and judge them fairly as the author failed to
11 disclose the motivation for those remarks. I'm a lawyer and when I
12 represent a client, I think it's fair to disclose that
13 representation, so people know the basis for the reasoning or
14 representations that I make. I think when you people watch TV, you
15 see a judge and in front of a courtroom and the judge asks, are
16 you representing the plaintiff? Are you representing the defendant?
17 That's the sort of process that I'm used to. And so, when someone
18 provides comments and doesn't indicate why they're making those
19 comments in that they're employed by someone. It, it seems a little
20 disingenuous. Broadly, the greatest number of comments seem to fall
21 into four general areas. I've, I've numbered them in. I'll follow
22 up with some comments.

23 First water usage for the proposed plant. Second traffic
24 generated by employees, deliveries, and customers. Third value
25 added agriculture and a direct lev-leveraging of local resources,
26 and four an increase in tax base. The Environmental Information
27 inter-center, Information Center (MEIC)-I just wait a lot of people
28 you may know the object-has expressed concerns about the wastewater

1 treatment ponds and whether they should be lined and the kind of
2 lining material that they might have. And then back to these
3 numbered I-items I just talked about, with respect to number one-
4 and that's the water usage-as proposed the water usage for the
5 plant, and I'm referring to it as CCP (just cause I'm lazy) uh,
6 would be thirteen thousand gallons a day. I've tried to get
7 information for usage from source Giant Springs Water Bottling and
8 the Malting Plant whose water usage was brought to attention and
9 comments that we received.

10 Staff tells me to the wa-malting plant uses a portion of the
11 fish hatchery water right; and that it is considered non-
12 consumptive, because the water is piped back into the system and
13 then released to the city treatment plant. Then deschi-discharged
14 into the river above the dam. The Department of Natural Resources-
15 and they operate the fish hatchery-advise the staff that the Giant
16 Spring source has a similar arrangement with the fish hatchery
17 using a portion of its water right, having been approved for maximum
18 draw of three hundred gallons a minute or four hundred and thirty-
19 two thousand gallons a day. Department of Natural Resources does
20 not believe they're using that full draw staff has also advised us
21 the Giant Springs-and that's water that comes out of the Madison,
22 which is the aquifer that the eh CCP would be using for their water
23 source-lowers hundred and fifty-six million gallons into the
24 Missouri River each day from that quote source.

25 The applicant has also provided us information on estimated
26 draw down based on the proposed use from ah, nearby well. And then
27 kind of the conclusion I reached based on some of the information
28 based on those facts, it does not appear that the proposed use

1 would negatively affect the Madison formation from which the cheese
2 processing plant would be obtaining its water. Now ultimately, the
3 Department of Environmental Quality regulates water use. So that,
4 not strictly speaking something that this board is gonna control,
5 but just so you have the background, you know the information we
6 have received and where we're coming from or where I'm coming from.
7 The next item was traffic, and people expressed concerns on
8 three levels con-concerning traffic. One was traffic at the site
9 where people would enter or exit Highway 89. Another one was whether
10 a high- ah, 10th Avenue South could handle traffic of an additional
11 se-seven trucks a day and third was a field of vision for drivers
12 entering and leaving High-Highway 89 from the cheese processing
13 plant. The staff report indicated that there are four-thousand,
14 three hundred, and forty-two vehicles per day currently in the
15 vicinity of the proposed plant. They also gave us another number
16 which was lower for ah, site that eh, is not quite as close, so I
17 used the higher number. The staff reported that the Montana
18 Department of Transportation will require an Approach Permit and
19 require a tra- may require a traffic impact study that will address
20 these issues. If this board does decide to issue a permit. As far
21 as item number three, which is value-added agriculture, the
22 commenters discussed whether the m-milk plant could be using milk
23 from local producers, whether there was sufficient milk supply,
24 the eh, need for milk to produce cheese and the potential volumes
25 of milk and cheese that would be needed or produced. Finally,
26 people questioned whether the proposal was based on good business
27 judgment, which is obviously a matter beyond the scope of
28 jurisdiction of this board and as a business decision not one for

1 a regulatory body. Nobody wants government butting into their
2 business.

3 Okay, these concerns need to be addressed by--this my comment
4 with respect to that--those concerns. These concerns need to be
5 addressed by the applicant in order to make a business decision.
6 The applicant would need to address these issues if and only if
7 the board decides to issue a permit. And then the last item was
8 about the increase in tax base and I only found causes-positive
9 comments about the increase in tax base. So that's my summary of
10 the comments that I perceived to review, Mr. Chairman.

11 **Bill Austin (00:16:16):** Thank you Charles. That's pretty ah..
12 pretty in-depth ahh, research. I really appreciate that. Several
13 items that he did mention are items that the um, business itself
14 should be addressing and as Charles said, that doesn't, is not a
15 concern of this board. That's not what our ah, job is. So, Leonard
16 do you have any-anything to say.

17 **Leonard Reed (00:16:47):** Ah-um, I will save my comments for
18 later. Um.

19 **Bill Austin (00:16:54):** Rob?

20 **Rob Skawinski (00:16:55):** Now you go ahead and say anything.

21 **Michele Levine (00:16:55):** No, you first.

22 **Rob Skawinski (00:16:54):** No, I have none.

23 **Bill Austin (00:16:58):** I know Michele does.

24 **Michele Levine (00:17:01):** I do but I would like to hear your
25 thoughts first Mr. Chair.

26 **Bill Austin (00:17:07):** I'd rather hear yours or--if that's
27 okay?

28 **Michele Levine (00:17:15):** Okay, um, I agree with Charles,

1 that the volumes of comments are difficult to digest.

2 **Bill Austin (00:17:24):** Right, right it does.

3 **Michele Levine (00:17:25):** And uh, it makes it challenging
4 for us to prepare our detailed findings regarding each um, category
5 of criteria that we are required to address pursuant to the
6 regulations. And that makes it difficult for us to come up with a
7 detailed mitigation measures um, in order to address each public
8 comment so that the public feels that we have heard them, considered
9 their comments, and uh, basically decided whether or not it is
10 relevant and whether it deserves a mitigation measure. Um at this
11 time, I don't feel prepared with those findings or with the
12 mitigation measures um, to provide the adequate um, mitigations
13 for the project um. I also wished that I had more information.
14 Staff did submit the project to uh, the Public Works Department. I
15 don't think they commented on traffic or sight lines, which is one
16 of the things we are to consider. Uh, and so, that's just one
17 example uh. It would be helpful um, to digest all of the comments
18 perhaps in a grid format um, regarding the substance of the comment,
19 whether or not it's applicable to the project and the review
20 criteria. And if yes, which category and then if so, is there a
21 potential meaningful mitigation measure? I think that would be a
22 helpful way to potentially structure our um, detailed, uh, findings
23 which we are required to make um, with our decisions and to help
24 us work through those, in fairness to the public and to the
25 applicant. Uh, one proposal would be to have staff um, attempt to
26 do that type of digestion in a word document or spreadsheet form
27 that is then um, published on the website. It will also help inform
28 the public what is considered relevant information to us for our

1 purposes. I recognize that is an additional burden on staff time
2 and resources.

3 However, I think the uh, detailed nature of the project and
4 the significant community impact that it can bring both positive
5 and negative requires that level of detailed deliberation um, for
6 our community. I think that will help um, inform the public process
7 um, and um, slow down the decision but in a meaningful way so that
8 we can have very thorough and deliberate um, discussion. Otherwise,
9 um, we will have to do that sort of on the fly um, by uh, basically
10 doing our best to summarize the comments and draft the mitigation
11 measures somewhat on the fly. And I don't feel um, as comfortable
12 doing that and I don't know that that will be as fair to the public
13 or the applicant um. So, those are a couple of facts that's just
14 based on best practices. Um, there is also ah, an increase in
15 litigation regarding zoning projects both from project applicants
16 and from citizens. I think that this is a way for us to move forward
17 in a thoughtful manner.

18 Um, I also um, I just want to remind the public that we ah,
19 work for free. We are volunteers. We are not paid to be here. We
20 do this out of our own time um, and that um, that it is important
21 for us to be civil to each other as uh, we work through these. I
22 recognize this has a lot of impacts for people um, but we are doing
23 our best as we can as unpaid volunteers appointed by the
24 Commissioners to make these decisions and to be respectful as we
25 do so. So that is my, my long-winded thought process um, regarding
26 how to proceed um, but I um, respectfully wished to hear from the
27 rest of you um, regarding your thoughts and what you would like to
28 do.

1 **Bill Austin (00:21:41):** Thanks, Michele. I wasn't as thorough
2 as Charles or as Michele, I also have that stack about so deep of
3 ah, comments. I read many, many of the comments. Several of them
4 were pretty much ah-I don't know if they got together to write
5 their comments, but they're almost exactly the same. And the way I
6 read personally(just from me) on some of these comments is that
7 their thought process of the (people writing these comments) is
8 that the cheese factory is just a way for the ah, applicant to uh,
9 work his way in so to speak, and then ahh, this slaughterhouse that
10 we always hear about that ahh, is totally detached from what we're
11 looking at. But I read that in the so many of those comments and I
12 don't know how Charles, you get delineated those out of there ah,
13 ah, but there was an awful lot and, and I agree with what Michele
14 says is very difficult to uh, actually reach a conclusion that's
15 going to be satisfactory to huh everybody. We just have to go by
16 the way the statutes are written in the law and govern accordingly.
17 Uh, those are my comments. Rob?

18 **Rob Skawinski (00:23:26):** Well, I'm kind of a cut to the
19 chase kind of guy. So, um-

20 **(Some public attendees interrupt to say that they cannot hear**
21 **Mr. Skawinski.)**

22 **Rob Skawinski (00:23:31):** I think well, I mean, we've all
23 read all the comments. They're all um, they're pretty much centered
24 around the same thing uh. And it all boils down to uh, I think the
25 legality of it. I mean, we've got two options. Eventually, we got
26 either to make a motion to deny it or we make the motion to approve
27 it. If we're gonna make the motion to deny it, we have to have a
28 legal reason to do so. So um, at this point in time, I can't find

1 one and I mean we could spend the next six months looking for one,
2 but eventually we got to come up with a decision. So, um, I think
3 a lot of these issues... The water rights, the traffic usage um,
4 those aren't our issues uh. The water rights issues are for uh,
5 DNRC. So, it's not within our jurisdiction. Uh, the line of sight
6 um, the encroachment permit from the highway is not our
7 jurisdiction that's in MDT. So, a lot of these concerns are not
8 for us to decide. So, unless we can find something else, then I
9 think we have to make a motion to approve it.

10 **Bill Austin (00:24:49):** Okay.

11 **Rob Skawinski (00:24:50):** But, um-

12 **Bill Austin (00:24:51):** I'd like to comment on, on the water.
13 I read as much as I could. They're all sorted, it doesn't look to
14 me... Some people were concerned that it was going to be a heavy
15 use on that water. And everything I can get my hands on did not
16 demonstrate that. So, I think it is well within uh, what they would
17 be able to use without hurting the ah, water table in that respect.
18 Uh, I also agree on the line of sight for traffic coming on and
19 off. That's up to the highway department to do those things. And
20 uh... Now Leonard, do you?

21 **Leonard Reed (00:25:37):** Well it's a privilege to be able to
22 serve our county in this regard um. We all wonder what we're doing
23 here really. Why we're ending up err doing this, but we're all
24 interested in the basic ah, improvement of our community and our
25 business um, climate here and um, there's been a lot of study done.
26 I can see Michele uh, thinking and uh, there are some things that
27 need to be answered before the decision is made uh. If the board
28 feels that way, why I would certainly support uh, tabling this at

1 this point and bringing it up when we have a clearer picture of
2 the um, the advantages versus the disadvantages. Mr. Chairman.

3 **Bill Austin (00:26:45):** Thank you. I kinda line up with Rob
4 um. I, I don't see um, a legal reason on everything that we have
5 covered. And I know I'm not a lawyer. We have a couple of lawyers
6 here. And sometimes that's good and sometimes that's bad. My
7 opinion only, but I'm kind of lining up with Rob. Uh, he's the
8 businessman understands business also. So anyway, that's, that's
9 where I am. Charles anything else?

10 **Charles Kuether (00:27:22):** I, I don't have any more. I don't
11 have anything more to add to the discussion. If, if the board is
12 through discussing application, I'm willing to take the motion for
13 the purpose of seeing whether the board is interested in supporting
14 it.

15 **Bill Austin (00:27:38):** Okay, thank you. Well, at this point,
16 I will open the board uh, and entertain a motion.

17 **Charles Kuether (00:27:22):** Okay, I, I'm going to make a
18 motion and I actually printed it out. And I'm going to pass it down
19 so you guys each have a copy and that way—because it's long winded
20 and—that way if you guys want to modify my motion or object to some
21 portion of it, you have it in front of you and you know what you
22 are going object to. Okay, after reviewing the records before us
23 and—

24 **Sandor Hopkins (00:28:20):** Can we get a copy of that as well
25 please? Or or copy of that please?

26 **Charles Kuether (00:28:24):** I—I actually have an electronic
27 copy for you of that in the long run, if this passes.

28 **Sandor Hopkins (00:28:28):** Even better thank you.

1 **Charles Kuether (00:28:30):** Uh alright, after reviewing the
2 records before us and eh, and the application, the staff report,
3 the many attachments, the public comment, the written public
4 comment, I move the board adopt the staff report and its findings
5 of fact starting on page two of the report as well as the findings
6 with respect to the analysis criteria also contained in the staff
7 report dated 06/27/2019 for SUP 006-2019 pages four through twenty-
8 four of the staff report and approve the Special Use Permit for
9 the applicant's proposed Cheese Processing Plant on parcel
10 0005348300, geocode 02-3017-34-4-02-01-0000 subject to the
11 following conditions. One, the applicant obtains a Driveway
12 Approach Permit from the Montana Department of Transportation and
13 completes the, a Transportation Impact Study if required by Montana
14 Department of Transportation. Two, the applicant obtains the
15 necessary water rights from the Department of Natural Resources
16 and Conservation. Three, the applicant obtains approval from the
17 City-County Health Department and the Montana Department of
18 Environmental Quality for a new public water supply wastewater
19 system. Board request that DEQ consider requirements for wastewater
20 ponds to be lined. The applicant obtains a Montana DEQ general
21 permit for stormwater discharges associated with the construction
22 and after construction installs required onsite, dent-detention
23 basins for stormwater runoff as part of a stormwater pollution pre-
24 prevention plan. The applicant obtains any other county, state or
25 federal permits required by the respective agencies for the legal
26 operation of the proposed use. Number six, the applicant add hires,
27 adheres to all relevant building code requirements established by
28 the Department of Labor and Industry. Seven, operation hours be

1 limited to 7:00 AM to 7:00 PM. Number eight, all cheese
2 manufacturing process activities must occur inside a fully enclosed
3 building and not be visible to the general public, with air from
4 the internal cheese manufacturing process treated or filtered to
5 address odor concerns. Number nine, all setback requirements for
6 the Ag-District must be followed. Number ten, outside storage must
7 be fully screened to conceal work equipment or materials not stored
8 inside, with landscaping to meet or exceed County standards.
9 Eleven, no structure is to extend into the height overlay district.
10 Number twelve, the applicant is to ex-~~execute~~ and record a road
11 easement from Highway 89 to the parcel the Cheese Processing Plant
12 is located on. Number thirteen, outside lighting is to be designed
13 to avoid light pollution with the goal of being dark sky friendly
14 or dark sky compliant if possible. That's my motion.

15 **Bill Austin (00:32:22):** Any comments, comments on the motion?
16 It's pretty thorough.

17 **(some public attendees state the word 'yeah')**

18 **Michele Levine (00:32:33):** I think we need a second on the
19 motion first. Or?

20 **Bill Austin (00:32:39):** Well, you can comment on the motion.

21 **Michele Levine (00:32:43):** Um, Mr. Chairman and Charles and
22 um, thank you for a detailed um, starting place. I think that a
23 number of your measures address a number of the concerns and provide
24 for some mitigation measures. One of the concerns that I have is
25 pursuant to um, Special Use Permits on page 129 of our regulations
26 um. We are required to consider traffic conditions in the vicinity,
27 the effect of additional traffic on the streets and sight lines at
28 street intersection and approaches. I do not feel that we yet have

1 this information to be able to consider it or adequately mitigate
2 it and I'm not sure if the Department of Transportation will provide
3 that information um. In addition, we are also to ahh, um, examine
4 protection of public community and private water supplies including
5 possible adverse effects on surface waters or ground waters um.
6 Given land application, I'm not sure that requires an NPDES Permit
7 with the Department of Environmental Quality and I'm not sure if
8 we have provided for adequate mitigation um, for that um. In
9 addition, ah, there have been concerns raised regarding odor
10 control um. I think that is also something that could potentially
11 be a conflict that would mean to be um, mitigated under regulations.

12 Conditions may be required um, to mitigate potential conflicts
13 in order to um, resolve those conflicts. I think we would need to
14 address odor um. In addition, um, there could be design standards
15 including paving to reduced ahh, dust ah, and address that air
16 quality concern um. There may also be a need for ah, emergency
17 access and secondary access ahh. I'm also wondering if we need
18 monitoring of water quality and quantity um, regarding protection
19 of private water supply. Since, these are exempt wells, they would
20 not be required to get water rights. So that would not necessarily
21 protect um, the water quantity for private water wells and that
22 would place the burden on private folks to have to monitor that um
23 and get their baseline data to determine whether or not there is a
24 drop there um. I think those are a couple of concerns. I'm not sure
25 whether the board is interested in an obtaining additional
26 mitigation measures or not at this time. I would seek feedback from
27 the board um. If so, we can try to work through adding some
28 additional mitigation measures um. In addition, I'm not sure if we

1 ever received any comment from ah, the fire districts? Ah, and
2 whether or not ah, the provisions for water for firefighting would
3 meet their needs. I just don't have that information um, or whether
4 or not any mitigation would be appropriate there ah. So those are
5 some questions and concerns that I have for the rest of you.

6 **Sandor Hopkins (00:35:57):** Mr. Chair, if I may?

7 **Bill Austin (00:35:57):** yeah

8 **Sandor Hopkins (00:35:58):** We did notify the Sand Coulee
9 Volunteer Fire Department by certified mail. They did not provide
10 comments on this Special Use Permit.

11 **Bill Austin (00:36:09):** Okay. So, from that, we can assume
12 what?

13 **Sandor Hopkins (00:36:17):** I'm reluctant to make assumptions
14 based on no response.

15 **Bill Austin (00:36:21):** Thanks, I wouldn't either. Charles
16 your original motion?

17 **Charles Kuether (00:36:35):** I'm, I'm sorry, what was the
18 question?

19 **Bill Austin (00:36:38):** Ahh with Michele's concerns.

20 **Charles Kuether (00:36:39):** Ah as far as I'm concerned, I'm
21 making the motion. If someone would like to second it, I think we
22 can take action."

23 **Bill Austin (00:36:45):** Right, Okay.

24 **Charles Kuether (00:36:45):** Because there was no second ahh...

25 **Bill Austin (00:36:48):** It dies.

26 **Charles Kuether (00:36:49):** Somebody else can make a motion.
27 I-I was sort of throwing that out ah, as a place to start or we
28 could take action or not.

1 **Bill Austin (00:37:02):** All right. I just want to hear uh,
2 that a little more, but I agree. I think there is a motion on the
3 floor, and I think ahh, I would like to ask ah, for a vote on the
4 motion.

5 **Charles Kuether (00:37:13):** We have to get a second first or
6 it's not....

7 **Bill Austin (00:37:15):** Oh, did we get a second?

8 **Michele Levine (00:37:16):** No, sorry.

9 **Bill Austin (00:37:19):** No, I'm sorry. I did not get a second.
10 Can we get a second on that motion?

11 **Rob Skawinski (00:37:21):** I'll second.

12 **Bill Austin (00:37:22):** Okay, we have a motion and a second
13 on ahh, this to approve eh, I'm not going to read this whole thing
14 again.

15 **Bill Austin (00:37:39):** Okay, so we do have a motion and a
16 second. So now-

17 **Charles Kuether (00:37:41):** Mr. Chairman?

18 **Bill Austin (00:37:42):** Yes, sir?

19 **Charles Kuether (00:37:43):** Before we go any farther. It seems
20 to me the motion is now in play, because we have a motion and a
21 second. So, if, if, if at this point if Michele or someone else on
22 there on the, the board wants to modify the motion, this, this is
23 the time to do it before we take a vote.

24 **Bill Austin (00:37:59):** Right. That's what I was gonna ask if
25 Michele and add or modify.

26 **Charles Kuether (00:38:59):** Okay.

27 **Michele Levine (00:38:05):** Mr. Chair, if the other members
28 are interested, I'm willing to do so. But if, if you're not

1 interested, it seems like it could be an exercise in futility.

2 **Bill Austin (00:38:13):** Okay.

3 **Charles Kuether (00:38:14):** I'm, I'm always happy to see
4 whatever I did improve. So, if you got improvements, I am happy
5 cause....

6 **Bill Austin (00:38:22):** Well, I think, I think I really uh,
7 commend Charles for this motion, because ahh, I think you pretty
8 well in my mind covered everything that's needed to be covered and
9 all those conditions. I mean, those are some pretty strict
10 conditions you listed there, so I'm happy with that.

11 **Rob Skawinski (00:38:55):** Um, why don't we go through
12 Michele's concerns one more time and then discuss ahh, mitigating
13 each one of those. And add those to the motion.

14 **Bill Austin (00:39:04):** Okay.

15 **Rob Skawinski (00:39:05):** I, I'd feel comfortable doing it
16 that way. And I think we should do that and Michele?

17 **Michele Levine (00:39:12):** Okay, um, starting with number one.
18 One of the public comments that we received um, was for residents
19 that lived directly across from the ah, proposed access point ah,
20 for um, the uh, permit applicant um. In order to address that
21 concern and if the um, new road um, at that location would create
22 increased risk of crashes um, that um, the Department of
23 Transportation um, be able to consider moving um, though the road
24 location um, to increase safety. Again, I don't have the
25 information on the sightlines, I don't have any information on the
26 traffic study, but since we're kicking this to ah, the Department
27 of Transportation to complete a traffic impact study and a driveway
28 approach permit that they'd be allowed to consider relocating um,

1 the intersection if necessary.

2 **Bill Austin (00:40:16):** So, you would like that done prior?

3 **Michele Levine (00:40:19):** Eh, then that way they would
4 empower the Department of Transportation to relocate the
5 intersection if necessary.

6 **Bill Austin (00:40:25):** Oh, okay under that that's the
7 condition.

8 **Michele Levine (00:40:27):** Correct. Since we're empowering
9 the department to require a traffic impact study and an Approach
10 Permit um. We could also allow them to consider relocation of the
11 intersection.

12 **Bill Austin (00:40:40):** Okay Charles?

13 **Charles Kuether (00:40:42):** Sounds good to me.

14 **Bill Austin (00:40:45):** Okay.

15 **Rob Skawinski (00:40:45):** I think they would automatically do
16 that anyway. It's been my experience with encroachment permits uh,
17 that they're going to check into the line of sight and do their
18 due diligence and they're either going to grant it if it's safe or
19 they're gonna not granted if they required it to be moved.

20 **Bill Austin (00:41:03):** Well that's something they're gonna
21 do anyway.

22 **Rob Skawinski (00:41:05):** I think so.

23 **Bill Austin (00:41:06):** Yeah.

24 **Michele Levine (00:41:08):** So, if they're going to do it
25 anyway, I see no harm then in sticking it in there.

26 **Charles Kuether (00:41:12):** Yeah. I, I think if we add that
27 language to that item then if the department is going to go with
28 any way we're covered, if they're not going to do it anyway, we,

1 we could ask them to do it.

2 **Bill Austin (00:41:21):** Right.

3 **Charles Kuether (00:41:22):** So, I think that is the best of
4 both worlds in that aspect.

5 **Bill Austin (00:41:25):** Okay.

6 **Michele Levine (00:41:27):** So that, what the language would
7 be, the department may relocate the intersection if necessary.

8 **Charles Kuether (00:41:34):** What I did was I added one line
9 at the end. There uh, is if required by Montana Department of
10 Transportation and I just put and relocate to the intersection if
11 it can be approved.

12 **Michele Levine (00:41:48):** Okay.

13 **Bill Austin (00:41:51):** Okay you got that down?

14 **Charles Kuether (00:41:53):** Yup.

15 **Bill Austin (00:41:56):** Okay, next?

16 **Michele Levine (00:41:58):** Umm next, I'm going to need some
17 assistance on if there is another way to ensure whether private
18 um, and public surface and groundwater supplies will be protected
19 um. Since, the applicant has chosen to use exempt wells and that's
20 the purview of the DNRC and not us and yet we have these criteria
21 that we're supposed to um, protect um, these water supplies. So,
22 I'm wondering how we do that....

23 **Bill Austin (00:42:30):** Let, let me-

24 **Michele Levine (00:42:31):** Some, other applicants are-some
25 other counties have required um, monitoring of groundwater and
26 surface water quality and quantity; and then, reporting that
27 information to Planning offices on certain intervals as one way to
28 um, to do that type of monitoring to meet our duties, to consider

1 those under the regulations.

2 **Bill Austin (00:42:52):** Well, that, that could be a condition,
3 I mean we could do that.

4 **Charles Kuether (00:42:55):** Michele, let me tell you what I
5 was thinking when I wrote that um. I, I have a well, and my well
6 is in the Madison. So, I'm directly affected by this recently; and
7 wha-what I was intending to say here is that the necessary water
8 rights pertaining-well, what he's proposing is from what I
9 understand two wells, much like my well I have for my house, which
10 does not require a, a water right. I'm entitled to that something
11 because I drill a well. I'm using less than a certain volume of
12 water. So as a, a citizen who lives here and drills a well. I'm
13 entitled to that. And he would drill two wells that would allow
14 him to do that, much like two homeowners were to build two houses,
15 drill two wells. They would have exactly the same right.

16 That, that Mr. Friesen would have ah, in the eh, scenario that
17 he's proposing in the application, in which case the DNRC would
18 step in and they would require monitoring and the, the things that
19 you are requesting. I don't think it's going to apply any more than
20 if you had a homeowner drilling the well. So, unless he exceeds
21 what he's asking for in his application, I, I think we're covered.
22 If he exceeds what he's asking for in his application, he's, he's
23 looking for a whole different kind of water right from the
24 department-it's a very different creature. So, I, I think two
25 covers what he's asking. If he changes his mind and goes a different
26 direction or uses more water, then it's a different story, and he's
27 going to have to play by different rules. At least that's my
28 perception and that's why I wrote this way, the way I did.

1 (A public attendee states that they cannot hear what Charles
2 Kuether just stated.)

3 Charles Kuether (00:44:59): I'm sorry. I was addressing her
4 instead of you or the applicant.

5 (Some public attendees state that they could not hear what
6 Charles Kuether just stated.)

7 Charles Kuether (00:45:03): Okay, did you hear any of it?

8 (Some public attendees state that they could not hear what
9 Charles Kuether just stated.)

10 Charles Kuether (00:45:08): Well, I was looking sideways is
11 kinda the problem. Ah, what I was trying to say is that I have a
12 well and my well is in the Madison. So, I'm affected by this as
13 would anybody else whose using water through near the Madison. And
14 what Mr. Friesen has done in his application is he has set up his
15 proposal so that he would be drilling two wells that would serve
16 much like the well that I have that serves my house. I don't have
17 to apply for a water right. I'm simply entitled to that as a Montana
18 citizen. I could drill a well tonight as long as I stay under a
19 certain volume of water for household use or in his space for his
20 facility. Each of those individual wells or my individual well I'm
21 entitled to, as a matter of right. And the way he's written
22 application and the way I think I have written this, if he stays
23 within what he has proposed, he would be the same as if two
24 homeowners came in and drilled individual wells. It, it won't have
25 a huge impact on the Madison. If he changes his mind or the kind
26 of operation that he is running such that he needs more water or
27 wants to use more water. Then, he's going to have to have a
28 different kind of water right. That's going to require monitoring

1 and can require a whole different process from the department and
2 what he is proposing now. And so, I was telling Michele is I think
3 the language that I've worded addresses the proposal as it was
4 submitted to us. If he modifies what he's doing, we're in a
5 different ballpark and it would require a different situation. So,
6 dealing with what was submitted to us, I think what I've written
7 is, is adequate.

8 **Michele Levine (00:46:51):** Mr. Chair uh, may I respond?

9 **Leonard Reed (00:46:55):** "Michele wants to respond."

10 **Bill Austin (00:46:58):** "Fine."

11 **Michele Levine (00:46:51):** Um, Mr. Chair and uh, Charles um,
12 I was actually surprised that the applicant was using exempt wells
13 because the combined appropriation does exceed ten acre feet um,
14 as um, submitted in their information and pursuant to the Statute
15 85-2-306 Subpart 3A, um, a combined appropriation from the same
16 source or two or more wells for developed springs exceeding ten
17 acre feet of the flow rate requires a permit from DNRC. So, I do
18 think that there is some potential that this could be considered a
19 combined appropriation that would require a water right, and that
20 would not be subject to the exempt well provisions. That being said
21 um, I still think we have an obligation under our regulations to
22 protect public community and private water supplies including
23 potential adverse effects on surface water or ground water. And
24 that one of the ways we could mitigate um, that and provide for
25 that protection is with some type of monitoring of quantity and
26 quality um, to ensure that um, there are not adverse impacts that
27 are born by adjacent land owners or by Giant Springs or others,
28 senior water rights holders. And other counties have imposed um,

1 uh, those types of monitoring requirements um, to mitigate that
2 potential impact. That would also apply to the land application of
3 the wastewater, which will contain organic matter, which could also
4 seep into ground water or reach surface waters. So, since this is
5 on a plateau. Uh, then, elevation will dictate that water and other
6 things will roll downhill. Um, and so that would be a potential
7 way to capture any potential impacts, and I'm wondering if the
8 board is open to that idea of monitoring of quantity and quality
9 to fulfill our burden under the regulations to protect water
10 supplies: both surface water and ground water.

11 **Bill Austin (00:49:18):** See, the way I read, we already got
12 that in the way Charles has that written. Yeah. And he has to
13 obtain the necessary water rights from the Montana Department of
14 Natural Resources and Conservation. So, it might sound broad, but
15 I mean that it covers the situation. Is that the way you, is that
16 the way you see it?

17 **Charles Kuether (00:49:47):** That was my intent that, that if
18 he does what he is applying for he is potentially covered using
19 the exception, if you want to call it an exception. And if not,
20 and Michele's right, then he has to go to the department and get
21 some additional water rights. But I thought the language was such
22 that either way we're covered. He either gets two individual wells
23 and that's adequate or because of the statutory language Michele
24 read, the department can step in and say, I'm sorry,

25 **Bill Austin (00:50:22):** Great.

26 **Charles Kuether (00:50:22):** You have to do something
27 additional. And he wouldn't be mandated to do that by our approval.

28 **Bill Austin (00:50:30):** That's, that's the way I understand

1 it. They could always step in if it was necessary. If, if, ah, the
2 way it's written makes them question I think they would step in
3 and add something to that.

4 **Michele Levine (00:50:49):** Ah, I'm not sure that DNRC does
5 that level of monitoring and that it would be up to private citizens
6 um, to determine whether or not there was an impact. And they would
7 have to seek um, action to protect their water right. It would be
8 basically transferring that burden to adjacent land owners to
9 determine whether or not there is impact and then to take action
10 to defend their water rights. I-I'm not aware of DNRC doing that
11 level of monitoring um. And so we can put some monitoring sideboards
12 here to mitigate potential impacts. If they're exempt wells um,
13 then they're not going to be getting a water right and you're not
14 going to be studying um, impacts to senior water rights holders,
15 and this is an exempt well proposal. So, if they are not required
16 to get a DNRC permit (and they wouldn't under this application as
17 proposed). I don't think that the potential impacts to um, public
18 and private water supplies are necessarily mitigated um, by the
19 proposal or by the um, uh, um, paragraph three um, of the existing
20 motion before us. Hence, why I would propose adding um, monitoring
21 of um, public and um, private. They basically have monitoring wells
22 for water quality and water quantity.

23 **Bill Austin (00:52:14):** On, on item two? Are you talking?

24 **Michele Levine (00:52:18):** It would apply to item two and
25 three.

26 **Bill Austin (00:52:19):** Okay

27 **Michele Levine (00:52:20):** For water quality and quantity that
28 we impose some type of monitoring uh, to ensure that there are not

1 impacts to groundwater and surface water. That, that's a potential
2 way we could mitigate those impacts.

3 **Bill Austin (00:52:38):** Do you see what she is talking about
4 ah, Charles?

5 **Charles Kuether (00:52:41):** Sure, all right. Do you have any
6 proposed language you'd like to use?

7 **Michele Levine (00:52:50):** Um, let me see, um, I need a minute.

8 **Rob Skawinski (00:53:02):** Can I interject while you are
9 thinking about that?

10 **Michele Levine (00:53:03):** Yeah.

11 **Rob Skawinski (00:53:04):** So, I think you're talking about
12 maybe two, two separate things. One is monitoring the volume of
13 water that's being used,

14 **Michele Levine (00:53:11):** correct.

15 **Rob Skawinski (00:53:12):** Which would have to be a water meter
16 of some sort, which I think would be fairly easy to do. And uh,
17 the other would be ground groundwater monitoring wells um, which I
18 think are out there a little more costly to do. Like I think that's
19 possible, possibility to do that also. Um...that's it.

20 **Bill Austin (00:53:46):** Give Michele a minute to get her
21 thoughts together right now.

22 **Michele Levine (00:54:08):** Um, if we were to impose that type
23 of monitoring, what do you think would be a fair timeframe? How,
24 how often hmm?

25 **Bill Austin (00:54:28):** I mean they're using water every day.
26 So....

27 **Rob Skawinski (00:54:35):** Are you thinking like a quarterly
28 report?

1 **Michele Levine (00:54:38):** That's what I was thinking. That
2 would account for the seasonal variations,

3 **Rob Skawinski (00:53:42):** Uh, hmm

4 **Michele Levine (00:54:43):** Um, because you're going to have
5 substantial variation depending on season. And I mean, since we're
6 going to be pulling the water out anyway, it would be pretty easy
7 to take occasional water samples and send those to the lab uh.
8 Their own wells will, you know, dictate um, quantity. I'm just
9 wondering how to capture um, the adjacent landowners' permission
10 um; or (maybe like you said) maybe another well on the edge of the
11 property.

12 **Bill Austin (00:55:16):** Yeah, I understand what, what you're
13 getting at Michele, but with the volume of water that's put out
14 every day there, I, I honestly can't see that uh—I don't think it
15 is necessary because of the volume of water that Madison uh. I'm
16 also in the Madison for my water so... But if you think that it
17 should be in there and that makes you feel that it will be more
18 secure for us uh, later when somebody decided you know do something.
19 Then, we should do that.

20 **Michele Levine (00:56:05):** I, I hear what you're saying. Mr.
21 Chairman but I think three million gallons of water annually could
22 potentially impact a neighboring land owner. It might not impact
23 Giant Springs, but it could impact um, somebody closer um. There
24 are landowners on that are relatively close um, as the crow flies
25 to the proposed project. So, I—I'm not sure that it's fair to
26 transfer that burden to them um, uh, to try to prove if they are
27 harmed by any potential draw downs. Um, I'm just trying to think
28 of how we could um, do some kind of monitoring uh, to just assure

1 that we don't adversely impact-

2 **Bill Austin (00:56:47):** Oh, well if you have a monitor you
3 would have to have uh, something to compared it to, I mean it could
4 go over this amount or what? I mean what would be the penalty? I
5 mean what would be the...

6 **Michele Levine (00:57:02):** Um, in other counties um, they set
7 some permit conditions and then um, some compliance I was--again, I
8 don't have that level of detail, which is why I wanted to postpone
9 um, I'm vigilant to get that type of information. I'm just not in
10 a position and um, so got a level of mitigation at this time um.
11 So, um, I regret that I'm not in a position to try to mitigate
12 those types of impacts. I do see that as a potential weakness for
13 us; but I do think you could still do some quarterly monitoring at
14 least, or groundwater and surface water quality um, and have that
15 information to be submitted to the Planning office for public
16 review um. And then the information is there for the public to
17 review. I am not exactly sure what consequences there would be,
18 but at least we would have the information if there are any changes.
19 You can get both baseline information and then track it over time.

20 **Leonard Reed (00:58:15):** The uh, Mr. Chairman the level of
21 the water and the individual wells is um, going to be critical and
22 uh Let's say you have a hundred-foot column of water in your well,
23 which many people do, most are fifty or more. If that goes down
24 significantly, then you'd know that you're in trouble ah. It's uh,
25 it would be nice if there was some a way to do kind of a kit uh.
26 EQC might have someone that could uh, mathematically uh, make a
27 determination what that would do uh, because a uh, wells uh, column
28 of water do change with the barometric pressure as Michele

1 mentioned, with the uh, drought, now the snow pack in the mountains
2 of course it, I understand it take years to get from the mountains
3 down to the wells.

4 **Bill Austin (00:59:23):** Right.

5 **Leonard Reed (00:59:24):** To all the sand and the rock
6 formations. And uh, I-I'm concerned about that um. I think the only
7 way to monitor that would be to look at the level of the wells um,
8 and I think there's people that would be, uh, would do that fairly
9 soon or very quickly. So that decision could be made about that.

10 **Rob Skawinski (00:59:56):** Mr. Chair, can I ask a question of
11 the engineer?

12 **(Bill Austin nonverbally agrees.)**

13 **Rob Skawinski (00:59:56):** Kevin or Joe? Uh, can you step up
14 to the podium, please?

15 **(Kevin May comes to the podium.)**

16 **Rob Skawinski (01:00:11):** An exempt well is subjected to a
17 certain volume of water is that correct?

18 **Kevin May (01:00:15):** Correct, ten-acre feet per year, at a
19 maximum, of thirty-five gallons a minute.

20 **Rob Skawinski (01:00:24):** So, um, if we were to put up a,
21 water meter on the well at some point (just like everybody has in
22 their house) um, that, that way you could meter the water usage
23 and report that on a quarterly basis. And if that water usage
24 exceeded the amount that is allowed by an exempt well then, the
25 applicant would have to apply for uh, water rights through DNRC.

26 **Kevin May (01:00:52):** Uhh, my understanding is yes.

27 **Rob Skawinski (01:00:55):** Cause I think the concern is that
28 they're going to drill these two exempt wells and then they're

1 going to use way more water than they what they say they're gonna
2 use. And I think by right uh, legally, they have the legal right
3 to drill the exempt wells per DNRC regulations. And there they have
4 the right to that water. And if they exceed that volume, then they
5 lose the right to the exempt well, and then they will have to go
6 to either um, Giant Springs or somebody and uh, whoever it may be
7 and then buy more water rights. Um, I think that would...that's the
8 question. I have another question for you. While you're up there.
9 The other issue would be um, uh, the wastewater so um. You have
10 ground monitoring wells for fuel stations, you have them for uh,
11 dumps um. Could you do ground monitoring wells for this area to
12 uh, monitor the quality of the groundwater at certain elevations?

13 **Kevin May (01:02:04):** Ah, yeah, so, a standard requirement
14 from the Department of Environmental Quality for a lagoon system
15 where wastewater will be stored will be for groundwater monitoring
16 wells surrounding that uh. It allows us to track it for liners
17 leaking or how that lagoon is performing. Um, so that is something
18 that is standard in our permit for a wastewater system already.

19 **Rob Skawinski (01:02:26):** And, and when you have those ground
20 with monitoring wells, what is their requirement for reporting on
21 those?

22 **Kevin May (01:02:32):** I believe they're quarterly, uh, but I
23 don't have an exact, uh, it's either quarterly or monthly.

24 **Rob Skawinski (01:02:37):** And who do you report that to?

25 **Kevin May (01:02:41):** DEQ.

26 **Rob Skawinski (01:02:42):** Okay, thank you. That's it. Anybody
27 else have any questions for the engineer?

28 **Bill Austin (01:02:49):** Yeah, I don't have any questions.

1 **Kevin May (01:02:50):** Okay.

2 **Rob Skawinski (01:02:51):** Okay, thank you.

3 **(Kevin May leaves the podium.)**

4 **Michele Levine (01:02:53):** Mr. Chair I think um, Mr. Rob just
5 came up with the conditions for me that we could require water
6 meters on the exempt wells, require quarterly reporting from those
7 water meters. And if the meters exceed the exempt well provisions,
8 then the applicant will be required to get a water right. I think
9 that's the condition right there.

10 **Bill Austin (01:03:16):** Okay, so you would like to offer that
11 as an amendment to the—

12 **Michele Levine (01:03:20):** Correct to number two.

13 **Bill Austin (01:03:21):** Okay, you've got the exact wording on
14 that?

15 **Michele Levine (01:03:26):** The applicant shall be required to
16 place water meters on its wells and quarterly report the
17 information from the meters to the Planning office. If the water
18 usage exceeds the exempt well requirements, uh, then the applicant
19 shall obtain a water right from DNRC.

20 **Bill Austin (01:03:50):** Okay, thank you. I think, I think that
21 would cover it, Charles?

22 **Charles Kuether (01:03:55):** The um, the only flaw I see in
23 that is uh, I, I don't know how you obtain a water right and whether
24 you obtain it from DR-DNRC or from a current water right holder.
25 And so, I wonder if the language about obtaining the water rights
26 from DNRC is correct? Or if it should just say, we'll be required
27 eh, to obtain uh, a water right from DNRC? You see where I'm going?

28 **Michele Levine (01:04:28):** Yeah, I do. And I'm, I'm fine with

1 that. Obtain a water right for their usage, because there are many
2 ways, they can obtain the water.

3 **Charles Kuether (01:04:34):** Yeah.

4 **Bill Austin (01:04:35):** Yeah.

5 **Michele Levine (01:04:36):** They could even, you know, decide
6 to get it from another water right holder.

7 **Charles Kuether (01:04:39):** Yeah.

8 **Michele Levine (01:04:40):** And truck it in or something. So
9 that's fine.

10 **Bill Austin (01:04:42):** That makes a little more sense to me
11 too.

12 **Michele Levine (01:04:44):** Yep.

13 **Bill Austin (01:04:49):** Okay, moving on to the motion.

14 **Charles Kuether (01:04:50):** So, we're okay number three?

15 **Bill Austin (01:04:54):** Yeah.

16 **Michele Levine (01:04:55):** Uh, I think for number three uh,
17 the um, the wastewater and it sounds like, and the ponds are already
18 addressed with uh, DEQ regarding quarterly reporting. So, I don't
19 think we need to duplicate their efforts.

20 **Charles Kuether (01:05:10):** Eh, Michele why don't we add a
21 condition that it be reported to the staff here as well as DEQ?

22 **Michele Levine (01:04:55):** Okay, then, um, in addition to
23 number three, um, the board requires, um, the applicant, um,
24 quarterly report um, it's groundwater monitoring to the Planning
25 office.

26 **Bill Austin (01:05:46):** Any other changes from number four
27 down? I think you really did a good job putting that together.

28 **Michele Levine (01:05:59):** Um, I have a few additional ones.

1 (Some public attendees begin to whisper and murmur inaudibly)
2 Michele Levine (01:05:59): uh, that, um, the applicant design
3 and adopt odor controls to reduce air quality emissions. They said
4 that they would have mitigation for air quality emissions, which
5 just hold them to that.
6 Charles Kuether (01:06:20): So, so is is, that part of number
7 eight? Are we talking about odor?
8 Michele Levine (01:06:27): Yes.
9 Charles Kuether (01:06:28): Okay.
10 Michele Levine (01:06:30): So, number eight, I propose the
11 applicant design and adopt odor controls to reduce, uh, air quality
12 emissions.
13 Rob Skawinski (01:06:50): Are you leaving the odor concern
14 verbiage in there or are you changing it to air quality emissions?
15 I think you want to leave odor concerns, because air quality (as I
16 know it) is-
17 Michele Levine (01:07:00): That is more DEQ.
18 Rob Skawinski (01:07:01): It measures-
19 Bill Austin (01:07:03): the odor, I think.
20 Rob Skawinski (01:07:04): The particulates in the air not the
21 odors.
22 Charles Kuether (01:07:07): I think we're-
23 Michele Levine (01:07:09): Correct.
24 Charles Kuether (01:06:50): I think we're adding-Oh, hang on
25 I have to read.
26 Michele Levine (01:07:13): Um, they basically designed and
27 adopt, um, odor control measures that would trump.
28 Bill Austin (01:07:24): Because the odor would be the main

1 concerns? I would think.

2 **Michele Levine (01:07:26):** Correct. It was a concern mentioned
3 by numerous public comments. So, I wanted to mitigate it and address
4 it. Another concern that, um, several commenters raised was um,
5 having livestock and dairy cows on site. Again, I think primarily
6 for that odor concern, one additional way we could mitigate that
7 is prohibiting livestock and dairy cows on site. The applicant said
8 that they are not intending for umm, any dairy cows on site. So
9 that would just be um, holding the applicant to what they said they
10 would do. Any objections to that?

11 **Bill Austin (01:08:08):** None.

12 **Michele Levine (01:08:11):** So, I propose we add a prohibition
13 on livestock and dairy cows being onsite.

14 **Charles Kuether (01:08:16):** I just did. I added that at the
15 end of thirteen.

16 **Michele Levine (01:08:20):** Okay.

17 **Bill Austin (01:08:30):** Does it look pretty- well that's a
18 lot of conditions.

19 **Michele Levine (01:08:36):** Well, we have a lot of things to
20 mitigate.

21 **Bill Austin (01:08:38):** That's ah-

22 **Michele Levine (01:08:39):** Umm...

23 **Bill Austin (01:08:40):** The most I've seen on anything that's
24 come through here. But they sound, and I believe they're all
25 necessary and they sound ahh pretty logical call.

26 **Michele Levine (01:08:50):** We, we have our received concerns
27 that uh, the roads be uh, onsite that they'd be sufficient width
28 to accommodate emergency vehicles including fire trucks, um, and

1 that they'd be paved to reduce odor and to accommodate emergency
2 vehicles. So, I propose that the applicant be required to meet
3 design standards regarding width paving and subsurface for access
4 roads to accommodate emergency vehicles and to provide for dust
5 control.

6 **Bill Austin (01:09:24):** Where, where were you putting in it?
7 That's for the egress.

8 **Michele Levine (01:09:27):** That, that would be a new one.

9 **Bill Austin (01:09:29):** Okay, that's for an egress and ingress
10 and emergency vehicles and so forth?

11 **Michele Levine (01:09:35):** We could also add an emergency,
12 um, egress um, and secondary access that would pr-provide, um, a
13 way out in the event of a uh, fire situation. For example.

14 **Bill Austin (01:09:51):** I thought, I think that should be in
15 there because of, it's not, uh, somebody will bring that to our
16 attention.

17 **Leonard Reed (01:10:03):** Will make that number fourteen?

18 **Bill Austin (01:09:51):** That, that'd be number fifteen.

19 **Michele Levine (01:10:05):** Yeah, fifteen. Should I repeat
20 that, or did you guys get it, got it, to repeat that?

21 **Rob Skawinski (01:10:17):** Yes, please.

22 **Michele Levine (01:10:19):** Okay. That the applicant shall meet
23 design standards regarding width pavement and subsurface for access
24 roads to accommodate emergency vehicles and to provide for dust
25 control. So that would be fifteen. Sixteen would be that the
26 applicant provides an emergency secondary access...Mr. Chairman may
27 ask a planning staff a question?

28 **Bill Austin (01:11:08):** Yes.

1 **Michele Levine (01:09:10):** Um, with your subdivision review,
2 do you sometimes, uh, have a requirement that the um, applicant
3 obtain any type of approval from the applicable fire district to
4 make sure that they are providing adequate water supply for fire
5 protection um, as well as any other fire concerns?

6 **Sandor Hopkins (01:11:31):** Yes, ma'am. We do on subdivisions
7 with lots of, uh, three lots or more. So, pretty much all the major
8 subdivisions will have some sort of fire suppression cistern, uh,
9 built within the subdivision that has to be approved by the rural
10 fire departments. Before we can file a final plat.

11 **Michele Levine (01:11:51):** Um, Mr. Chairman, one of the
12 concerns that we ah, received was regarding adequate um, fire
13 protection and so perhaps we could have a measure that um, the
14 applicant obtain approval from the applicable fire district,

15 **Bill Austin (01:12:08):** Th-

16 **Michele Levine (01:11:51):** Um, for firefighting cisterns or
17 whatever it may be-

18 **Bill Austin (01:12:13):** Th-the fire department was notified,
19 and ah as for their input and as I understand they did not respond
20 with any, any input or anything.

21 **Sandor Hopkins (01:12:28):** They did not provide comment.

22 **Bill Austin (01:12:30):** Okay

23 **Rob Skawinski (01:12:30):** Mr. Chair could ask another question
24 of the engineer?

25 **(Bill Austin nods his head yes.)**

26 **Rob Skawinski (01:12:35):** Mr. Kevin May. Would you step back
27 up to the podium please?

28 **(Kevin May comes to the podium.)**

1 **Rob Skawinski (01:12:35):** Was one of the wells that you were,
2 you guys were proposing, was it for fire suppression?

3 **Kevin May (01:12:54):** I believe we were looking at doing fire
4 storage cisterns on site utilizing the water supply from the wells.

5 **Rob Skawinski (01:13:01):** Okay, so part of your design, you
6 have planned for fire fire suppression cisterns already?

7 **Kevin May (01:13:07):** Fire protection measures of some sort.

8 **Rob Skawinski (01:13:10):** Okay, thank you. I don't see that
9 as an issue. If you want to add it. I'm mean it sounds like that's
10 already happened. So....

11 **(Kevin May leaves the podium.)**

12 **Bill Austin (01:13:22):** Uh, I don't, I think we even
13 addressed that at the first meeting. If I remember right, they
14 would have some uh, for fire protection that they take that into
15 consideration. So, I think would seem like I remember something
16 about that.

17 **Charles Kuether (01:13:41):** Uh, I think you're right Rob. If
18 we put it in there, it's probably already included. But but if we
19 put it in there then we know that it's covered.

20 **Bill Austin (01:13:52):** Sure. That'd be number seventeen?
21 Okay, anything else?

22 **Michele Levine (01:13:59):** Charles? How do you want it to
23 read?

24 **Charles Kuether (01:14:04):** That the cist-cisterns be eh, eh
25 approved by the local fire district for fire suppression. Unless,
26 you-

27 **Michele Levine (01:14:15):** Sounds good.

28 **Charles Kuether (01:14:16):** Unless you got something better?

1 **Michele Levine (01:14:18):** No, that sounds good.

2 **Charles Kuether (01:14:27):** Can, can you think of any other
3 modifications we need to make?

4 **Bill Austin (01:14:43):** It seems to me like everything is
5 pretty well covered.

6 **Charles Kuether (01:14:51):** Do-you want to make that as a
7 motion with the amended items on it, Michele?

8 **Michele Levine (01:14:59):** I'm just quickly checking through
9 public comments to make sure we tried to mitigate as much as we
10 can. One second.

11 **Bill Austin (01:15:28):** Sandor, okay what's ahh the motion on
12 the floor?

13 **Sandor Hopkins (01:15:40):** I will do my best repeat this.

14 **Sandor Hopkins (01:15:49):** Okay, so I move the board adopt
15 the staff report and its findings of facts starting on page two
16 the report as well as the findings with respect to the analysis
17 criteria. Also contained in the staff report dated 06/27/2019 for
18 Special Use Permit #006-2019, pages 4-24 of the staff report and
19 approve the Special Use Permit for the applicant's proposed cheese
20 processing plant on parcel 0005348300, geocode 02-3017-34-4-02-01-
21 0000 subject to the following conditions:-and please correct me if
22 I misspeak or mischaracterize any of the motions that were
23 previously made. I did my best to write all this down as quickly
24 as I could. Number one, the applicant obtains a Driveway Approach
25 Permit from the Montana Department of Transportation and complete
26 a traffic impact study if required by MDT and allows MDT to consider
27 relocating the intersection if deemed necessary.

28 **Charles Kuether (01:16:53):** I had put it as "be approved"

1 rather than "if it is necessary"

2 **(Sandor Hopkins edits his writings.)**

3 **Sandor Hopkins (01:16:57):** "It be approved"

4 **(Sandor Hopkins edits his writings.)**

5 **Sandor Hopkins (01:17:25):** Thank you for your patience. Number
6 two, the applicant obtains the necessary water rights from the
7 Montana Department of Natural Resources and Conservation and the
8 applicant shall be required to place meters on wells and submit
9 quarterly reports to Planning and obtain water rights if it exceeds
10 the exempt levels provided by DNRC. Number three, the applicant
11 obtains approval from the City-County Health Department and Montana
12 Department of Environmental Quality or DEQ for new public water-
13 excuse me-new public water supply, waste water system. The board
14 request that DEQ consider requirements for the wastewater ponds to
15 be lined. The board requires the applicant to provide quarterly
16 reports on the wastewater treatment to staff-excuse me-on the
17 wastewater monitoring wells to staff. Number four, the applicant
18 obtains the Montana DEQ general permit for stormwater discharges
19 associated with the construction activity and after construction
20 install required onsite detention basins for stormwater runoff as
21 part of a stormwater pollution prevention plan. Number five, the
22 applicant obtains any other county, state, or federal permits
23 required by the respective agencies for the legal operation of the
24 proposed use. Number six, the applicant adheres to all relevant
25 building code requirements established by the Department of Labor
26 and Industry. Number seven, operational hours be limited to 7:00
27 AM to 7:00 PM. Number eight, all cheese manufacturing process
28 activities must occur inside a fully enclosed building and not be

1 visible to the general public with air from the internal cheese
2 manufacturing process being treated or filtered to address odor
3 concerns; and the applicant is to design and adopt odor control
4 measures. Number nine, all setback requirements for the A District
5 must be followed. Number ten, outside storage must be fully
6 screened to conceal work equipment or materials not stored inside
7 with landscaping to meet or exceed county standards. Number eleven,
8 no structure is to extend into the height overlay district. Number
9 twelve, the applicant is to execute or obtain and record a road
10 easement from US Highway 89 to the parcel the cheese processing
11 plant is located on. Number thirteen, outside lighting is to be
12 designed to avoid light pollution with the goal of being dark sky
13 friendly or dark sky compliant if possible. Number-number fourteen,
14 a prohibition on livestock from dairy cows onsite. Number fifteen,
15 applicant provides adequate access, built to county standards to
16 prevent to mitigate dust control. Was there additional language in
17 there you'd like to read about road grading? We do have county
18 standards for roads in our subdivision, regulations.

19 **Charles Kuether (01:20:50):** The, the thing I had written down
20 is that it was "to be wide enough for emergency vehicles."

21 **Michele Levine (01:20:59):** Umm, and what I had was "design
22 standards regarding width, pavement, and subsurface for access
23 roads to accommodate emergency vehicles and provide for dust
24 control shall be implemented."

25 **Sandor Hopkins (01:21:23):** That's a big one. Can you please
26 repeat it one more time so I can get it-

27 **Michele Levine (01:21:24):** Yeah.

28 **Sandor Hopkins (01:21:24):** Right.

1 **Michele Levine (01:21:25):** Yeah, I'll just walk over and give
2 it to you.

3 **Sandor Hopkins (01:21:28):** That would be better. Thank you.

4 **(Michele Levine walks over to give Sandor Hopkins her**
5 **amendments to the motion.)**

6 **Sandor Hopkins (01:21:48):** Thank you ma'am. Design standards
7 regarding width-excuse me-this would be condition number fifteen
8 design standards regarding width, pavement, and subsurface for
9 access road to accommodate emergency vehicles and provide for dust
10 control should be implemented. Number sixteen, applicant provides
11 emergency secondary access. Number seventeen, applicant obtains
12 fire suppression approval from the rural volunteer fire department.

13 **Charles Kuether (01:22:26):** I, I had ah approval for cisterns
14 for improvement. So, the language that you've got I've put cistern
15 in there somewhere.

16 **Sandor Hopkins (01:22:40):** How about this: applicant obtains
17 fire suppression cistern approval from the rural volunteer fire
18 department?

19 **Charles Kuether (01:22:49):** And "for fire suppression" at the
20 end.

21 **Sandor Hopkins (01:22:52):** Yes, okay. Applicant obtains fire
22 suppression cistern approval from the rural volunteer fire
23 department for fire suppression for the fire suppression system.

24 **Charles Kuether (01:23:04):** Okay.

25 **Sandor Hopkins (01:23:06):** I'm sorry I'm misphrasing that.

26 **Charles Kuether (01:23:08):** No. No, you're good.

27 **Sandor Hopkins (01:23:12):** Okay.

28 **Bill Austin (01:23:19):** That's the motion, right?

1 **Sandor Hopkins (01:23:21):** That is it. Yes. Pardon my few
2 hiccups there.

3 **Bill Austin (01:23:24):** All right.

4 **Michele Levine (01:23:27):** Umm, Mr. Chair? Umm, can we just
5 check with eh the county attorneys and make sure we've covered your
6 bases?

7 **(Bill Austin nods in agreement.)**

8 **Michele Levine (01:23:35):** Umm, Carey or Mercedes is there
9 anything we've missed?

10 **Carey Ann Haight (01:23:39):** Are you talking? I'm, I'm sorry,
11 you're talking in terms of the, the motion itself or?

12 **Michele Levine (01:23:44):** Correct.

13 **Carey Ann Haight (01:23:44):** Well, you have an original motion
14 on the floor, which has been seconded. I think what you've just
15 reviewed are the proposed amended motion.

16 **Bill Austin (01:23:50):** Amended motion.

17 **Carey Ann Haight (01:23:52):** And so, you're granted a motion
18 to amend the original motion consistent with what has just been
19 proposed. If that's the board's intent.

20 **Michele Levine (01:24:02):** Okay. Um, Mr. Chairman, I um move
21 to amend, um, the uh, motion as jud-as was just read by planning
22 staff um Sandor.

23 **Bill Austin (01:24:17):** Did your, the amended motion is that
24 what your-

25 **Michele Levine (01:24:21):** Correct.

26 **Bill Austin (01:24:23):** Okay. There's a motion on the floor
27 uh for the amended motion? Do we have a second on that?

28 **Rob Skawinski (01:24:34):** I'll second.

1 **Bill Austin (01:24:35):** Okay, we have a motion and a second.
2 We already had plenty of discussion.

3 **Michele Levine (01:24:44):** Um...Mr. Chair um...Charles, county
4 attorneys have we sufficiently laid down our reasons for our
5 findings?

6 **Charles Kuether (01:24:58):** My impression uh-

7 **Bill Austin (01:25:00):** Would you say that again? I don't
8 think that I followed you.

9 **Michele Levine (01:25:05):** So, we are required to explain what
10 we're doing and why we're doing it. I think we've explained what
11 we're doing in the motion but have the sufficiently explained why?

12 **Charles Kuether (01:25:19):** My-ah-my with the first part of
13 the motion that I have originally made that you have now modified,
14 where I said uh... where it happened the findings of fact on page
15 two as well as the findings with respect to the analysis of the
16 criteria and my reading of that criteria on pages 2-24, where the
17 that they went through the criteria, and that they made findings
18 with respect to those criteria. And in wording it the way I worded
19 it, we are adopting those findings. And so, yes. My impression is
20 that we have made findings consistent with the public input and
21 the staff report and that, that would be sufficient to support the
22 motion.

23 **Bill Austin (01:26:12):** That's what I was trying to get
24 straight into my head. The uh-umm staff report is where it all
25 started and then we got the input from the public- you know we try
26 to uh- the request from the applicant for our motion now to approve
27 that applicant request based on the previous information we have
28 along with the added conditions to the amended motion if that's

1 the way I understand it?

2 **Carey Ann Haight (01:26:53):** Mr.-Mr. Chair, if I could just
3 interrupt briefly. I think what you have on the table right now is
4 a motion to amend the previous motion and that has been seconded.
5 So, you have not yet voted-

6 **Bill Austin (01:27:05):** Right.

7 **Carey Ann Haight (01:26:06):** to amend it.

8 **Bill Austin (01:27:07):** We have to approve the amended?

9 **Carey Ann Haight (01:26:09):** Correct.

10 **Bill Austin (01:27:10):** Right.

11 **Carey Ann Haight (01:26:10):** So, you still have it pending as
12 an amendment that the board is going to consider. And then, once
13 the board acts on whether it wants to amend that motion or not;
14 then you would proceed with the next phase of this deliberation. I
15 hope I'm making sense.

16 **Bill Austin (01:27:30):** Well, we are gonna approve the amended
17 motion now. We just ah spent all this time on.

18 **Carey Ann Haight (01:27:38):** Yeah, it's, it's just that the
19 boards ah, ah agreed to proceed with the motion as amended. You're
20 not voting the amended motion.

21 **Bill Austin (01:27:47):** Right.

22 **Carey Ann Haight (01:26:48):** At this time. I just want to make
23 that clear.

24 **Bill Austin (01:27:49):** And that went with Michele's-

25 **Charles Kuether (01:27:51):** Well, I, I, I think. I think at
26 this point we need to call the question whether or not we want to
27 agree to amend the motion. Is that what you're saying?

28 **Bill Austin (01:28:07):** Right.

1 **Carey Ann Haight (01:27:59):** That is what I'm saying.

2 **Charles Kuether (01:28:00):** Yeah, yeah. So, do you need a vote
3 on whether we're, whether we're, you are amending the motion?

4 **Carey Ann Haight (01:28:06):** Correct.

5 **Bill Austin (01:28:07):** And, and that's what your mo- that's
6 what you-

7 **Michele Levine (1:28:10):** Correct. So, do you want to amend
8 that motion or not? So, first vote on an amendment and then you
9 can vote on the whole thing?

10 **Bill Austin (01:28:20):** Right. So, we, we need a second on
11 that.

12 **Carey Ann Haight (01:28:23):** We have a second.

13 **Charles Kuether (01:28:24):** We have a second.

14 **Bill Austin (01:28:25):** We have a second on that. See, I'm
15 getting a little confused here. We keep going back and forth. Okay.
16 All in favor of the-

17 **Michele Levine (01:28:32):** Amendment

18 **Bill Austin (01:28:33):** Amendment of the motion

19 **Charles Kuether (01:28:35):** Of, of the motion.

20 **Carey Ann Haight (01:28:36):** Amending the motion.

21 **Bill Austin (01:28:37):** Amending the motion say aye.

22 **Leonard Reed (01:28:39):** Aye.

23 **Bill Austin (01:28:40):** Aye.

24 **Charles Kuether (01:28:40):** Aye.

25 **Michele Levine (01:28:40):** Aye.

26 **Rob Skawinski (01:28:40):** Aye.

27 **Bill Austin (01:28:41):** Okay let's ask now we are going to
28 vote on the amendment motion? Is that correct?

1 **Michele Levine (01:28:48):** Correct. And for that, I think we
2 need to just lay down some more track regarding the reasons. Um,
3 and I think that our findings include what was faced in them in
4 the staff report as well as all of the substantial public comment
5 we received as well as the additional information from the permit's
6 applicant, as well as the review of the standards that we took all
7 of those things into account. Um, and considered the potential
8 impacts, and that we have tried to mitigate those impacts as best
9 we can um, with the um, conditions that we have set forth; and that
10 those conditions should mitigate the traffic concerns, provision
11 of services, um, soil erosion, sedimentation, stormwater runoff,
12 protection of water supplies and um, protection of adjacent
13 landowners. Um, as well as considering the, um, the nature and
14 character of the surrounding area, which is primarily agricultural.
15 This um, type of project is allowed as a special use in the
16 Agricultural District. I think we have considered that character.
17 Um, and we have tried to resolve the potential conflicts between
18 the um, the Special Use Permit, um, and adjacent land owners. Um,
19 and that we have considered the growth policy objectives, um, and
20 that we have, um, done what we could to consider, um, the public
21 concerns regarding the project. And I think that is in part the
22 basis for our thought process. Um, regarding this Special Use
23 Permit application.

24 **Bill Austin (01:30:35):** Well isn't that primarily what all
25 those conditions were to the address all that you just said?

26 **Michele Levine (01:30:43):** Right. And that we, we took into
27 account not only the staff report findings but also the substantial
28 um, public comment, and information. This just said the findings

1 in the staff report. Um, so I just wanted it to be a little bit
2 broader regarding our consideration in what we took into account.

3 **Bill Austin (01:31:06):** Okay. Now that I-I've already forgot,
4 did we, ha did we have a motion to accept the amended?

5 **Charles Kuether (01:31:15):** Yes, we did.

6 **Michele Levine (01:31:16):** Yes, we did.

7 **Bill Austin (01:31:16):** Okay. Do we have a second?...

8 **Charles Kuether (01:31:15):** We, we've already-

9 **Michele Levine (01:31:20):** And we voted.

10 **Bill Austin (01:31:21):** Right understand we've amended it.

11 **Charles Kuether (01:31:23):** Now, we've can go vote whether or
12 not we want to.

13 **Bill Austin (01:31:25):** Right that was my question. Are we
14 going to vote on the amended amendment? Ha-ha.

15 **Michele Levine (01:31:35):** Correct.

16 **Rob Skawinski (01:31:35):** Yes.

17 **Bill Austin (01:31:36):** Can I have a motion to that effect.

18 **Rob Skawinski (01:31:39):** I think that you just need to call
19 for a vote.

20 **Charles Kuether (01:31:41):** Yeah, just call for a vote.

21 **Bill Austin (01:31:42):** All right. I'll call for vote either
22 way. All in favor?

23 **Rob Skawinski (01:31:48):** Aye.

24 **Leonard Reed (01:31:48):** Aye.

25 **Bill Austin (01:31:48):** Aye.

26 **Charles Kuether (01:31:48):** Aye.

27 **Michele Levine (01:31:48):** Aye.

28 **Bill Austin (01:31:51):** Opposed? Okay. Motion carried.

1 (There is some inaudible board discussion happening in the
2 background as well as various public attendees getting up to leave
3 the room.)

4 **Charles Kuether (01:32:18):** I-I don't know if you guys got
5 lost in this discussion or not. What, what we've done is we made a
6 motion to approve the application for the cheese processing plant.
7 The motion was amended and we, we approve the amended motion. Then,
8 we have approved the motion. So, what we have done now is we have
9 approved the cheese processing plant application with the seventeen
10 uh, conditions that Sandor read to the audience here a few minutes
11 ago. So that's the status of things right now. The application has
12 been approved, a permit will be issued, it will be issued
13 conditional on the seventeen items that Sandor read so you guys
14 are kinda all on the same page. You know what we've, we've done at
15 this point and then from now on we're going to go on to new
16 business.

17 **Michele Levine (01:33:18):** Umm, Mr. Chair, do you want to have
18 a brief recess?

19 **Bill Austin (01:33:20):** Yeah. I'd, I'd like to take just a
20 short recess.

21 (The board has a short recess, and then continues on to New
22 Business.)
23
24
25
26
27
28

Michele R. Levine
Chairman or Vice Chairman
(Print)

Michele R. Levine
Signature

11-18-19
Date

Sander Hopkins
Planning Staff (Print)

[Signature]
Signature

11-19-19
Date